

REMARKS

Regarding the provisional non-statutory double-patenting rejection, Applicant notes the Examiner's acceptance of the filed terminal disclaimer.

With respect to the Drawings, the Examiner has reiterated the position that Figures 1 and 2 should be labeled with a "PRIOR ART" legend. Applicant continues to disagree with the Examiner and requests that the Examiner again reconsider his position.

MPEP 608.2(g) governs the illustration of prior art. Form Paragraph 6.36.01 indicates that "only [when] that which is old is illustrated" should a figure be designated by a legend such as --Prior Art--. The test for whether a figure illustrates the prior art thus turns primarily on what is in fact illustrated in the Figure. To the extent the figure illustrates anything which is not in the prior art, then the inclusion of a --Prior Art-- label is not only not authorized by MPEP 608.2(g) but also would be potentially misleading to third parties reviewing the prosecution history of the application.

The Examiner focuses his analysis on the "invention." See, Advisory Action page 2. The drawing requirement under MPEP 608.2(g) is not tied to the issue of what is the invention, but rather to the test of whether "only that which is old is illustrated." The Examiner's discussion and analysis of the "invention" is thus irrelevant unless it can be shown that the figures at issue only illustrate that which is old.

In this regard, the Examiner has conceded in the Advisory Action that it is "correct" that "Figures 1 and 2 do not illustrate a prior art receiver" (emphasis added) That being the case, there can be no further discussion or issue as to whether Figures 1 and 2 should be labeled as --Prior Art--. The answer is clearly that no such legend is needed or appropriate.

Applicant further reiterates that Figures 1 and 2 illustrate receivers configured in the Mux/Sync Control/Idle Cell Removal machine 196 to perform operations of Figure 4 steps 90 and 92 which are not only not in the prior art but also relate to the invention claimed by Applicant. How could Figures 1 and 2 illustrate the prior art if they contain an illustrated component part which performs the steps of non-prior art Figure 4? Thus, Figures 1 and 2 do not illustrate a prior art receiver, and should not be labeled with a --Prior Art-- legend.

Claims 1-2, 4-14 and 16-34 remain pending in the application. Reconsideration of the claimed invention is requested.

Claims 1-2, 4-8, 10-14, 16-20 and 22-24 were rejected under 35 U.S.C. 103(a) as being unpatentable over the Applicant's Admitted Prior Art in view of Sonalkar.

Applicant has amended claims 1 and 13 in the manner shown herein. Applicant's amendments now focus the claims on "a required band of plural adjacent subcarriers numbering less than a total available band of subcarriers on one of the plurality of loops." There is no teaching or suggestion in Sonalkar for the identification of plural adjacent subcarriers where those subcarriers number less than the total number of subcarriers. Rather, Sonalkar focus on the N bins of the overall signal. Thus, the entire available band of subcarriers/bins is under consideration in Sonalkar for use. There is no teaching or suggestion for the consideration of plural adjacent subcarriers less than the total number of subcarriers.

Applicant's amendments further focus the claims on "calculating, for a plurality of subcarrier location positions of the required band of plural adjacent subcarriers for the new DSL loop communication within the total available band of subcarriers, a crosstalk noise effect of the new DSL loop communication with respect to the at least one active DSL loop."

In Sonalkar, a teaching is provided for individually allocating bits to individual frequency bins that requires the least possible power for a maximum data rate (page 13, line 19-22). This minimizes total power consumption (page 14, lines 3-4). A modification of this process is then used to minimize NEXT (page 14, lines 5-7). This effectively forces the allocation of bits to lower frequency bins (page 14, lines 13-14) because NEXT effects are higher at higher frequencies than lower frequencies (page 11, lines 14-20). Thus, what is being taught in Sonalkar is a bit spreading algorithm for dividing the bits of the DSL communication between the available subcarriers in a way which minimizes NEXT effects. This process does not in any way test a required plurality of adjacent subcarriers at a plurality of subcarrier location positions within the total available band of subcarriers for crosstalk noise effect so as to select a location in the band for the adjacent subcarriers. The focus in Sonalkar is on bit spreading among individual subcarriers, NOT on the positioning of plural adjacent required subcarriers within the total available subcarrier band as claimed. These two concepts are completely different from each other.

In view of the foregoing, Applicant submits that claims 1 and 13 distinguish over the cited prior art.

Claims 9, 21 and 25-34 were rejected under rejected under 35 U.S.C. 103(a) as being unpatentable over the Applicant's Admitted Prior Art in view of Sonalkar and Cole. Applicant respectfully traverses.

Applicant submits that claims 25-34 include limitations similar to those present in claims 1 and 13. Thus, claims 25-34 are patentable over the art for at least the same reasons as claims 1 and 13.

CUSTOMER NO. 30430

PATENT APPLICATION
Docket No. 01-OT-081

In view of the foregoing, reconsideration of the application and allowance of all claims is respectfully requested.

Respectfully submitted,
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